

APPEAL NO. 040983
FILED JUNE 23, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on April 6, 2004. The hearing officer determined that the respondent (claimant herein) had disability from July 17 through December 13, 2003, and that the claimant was entitled to change treating doctors to Dr. O. The appellant (carrier herein) files a request for review challenging these determinations. The claimant responds that the decision of the hearing officer should be affirmed.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

Disability is a question of fact to be determined by the hearing officer. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given to the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). When reviewing a hearing officer's decision for factual sufficiency of the evidence we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). Disability can be established by a claimant's testimony alone, even if contradictory of medical testimony. Texas Workers' Compensation Commission Appeal No. 92285, decided August 14, 1992; Texas Workers' Compensation Commission Appeal No. 92167, decided June 11, 1992. There was clearly conflicting evidence in this case concerning disability and based upon the above standard of review, we find no basis to reverse the hearing officer's decision concerning disability.

We next address the claimant's right to change treating doctors. The record contains an Employee's Request to Change Treating Doctors (TWCC-53) signed by the claimant, in which the claimant stated that he had not changed treating doctors and desired to change treating doctors for a number of reasons including the fact that Dr. O could prescribe medication for the claimant's pain whereas his then-current treating doctor, Dr. Oj, could not. The claimant also stated that he was not getting any better under the treatment of Dr. Oj and that Dr. O would be in a better position to refer the claimant to specialists. The Texas Workers' Compensation Commission approved this request. The hearing officer found that "[c]laimant's treatment by [Dr. Oj] was not the course of treatment best suited to bring her to maximum medical improvement." The hearing officer concluded that the claimant was entitled to change treating doctors

pursuant to Section 408.022. We cannot say that the hearing officer's factual finding was contrary to the great weight and preponderance of the evidence or that the hearing officer abused his discretion. We, therefore, find no basis to reverse the hearing officer's resolution of the change of treating doctor issue.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**CEO AND PRESIDENT
(ADDRESS)
(CITY), TEXAS (ZIP CODE).**

Gary L. Kilgore
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Margaret L. Turner
Appeals Judge